Prospects for Progress: an Interview with Ambassador Tibor Toth

Ambassador Tibor Tóth, Hungary's Permanent representative to the UN office in Vienna since 1997, is chairman of a negotiating body known as the Ad Hoc Group, which has met in Geneva since 1995 to draft measures to strengthen the Biological Weapons Convention (BWC). The BWC, which entered into force in 1975, outlaws biological weapons and their means of delivery but contains no formal verification mechanisms.

The Ad Hoc Group, mandated by a special conference of states-parties chaired by Tóth in 1994 to improve the convention's effectiveness, has been developing a legally binding protocol to the BWC. Since the summer of 1997, the group has based its negotiations on a rolling text of the draft protocol. The rolling text relies on a tiered system of declarations, visits, and investigations to ensure compliance with the BWC and envisages a regime that offers significant benefits to states-parties in terms of scientific and technical cooperation.

A number of key issues in the negotiations remain unresolved, such as how the protocol should deal with the transfer of biological agents and dual-use equipment and whether the protocol will leave room for existing export control groups, such as the Australia Group. Other points of dispute include the role and scope of visits, exactly which types of facilities should submit declarations, what procedures will be required to launch an investigation, and what terms in the protocol need defining. (See text box, and news story.)

Ambassador Tóth has been chairman of the Ad Hoc Group since its inception, before which he chaired the ad hoc group of governmental experts on verification measures for the BWC. Tóth joined the Hungarian Foreign Ministry in 1977 and served as ambassador at large for non-proliferation from 1996 to 1997 and as deputy state secretary of defense in charge of international matters from 1994 to 1996. He has also headed Hungary's delegations to the UN Conference on Disarmament and the UN General Assembly First Committee.

Seth Brugger, managing editor of Arms Control Today, met with Ambassador Tóth at the United Nations in New York March 24 to discuss the Ad Hoc Group's activities and prospects for progress.

The following is an edited version of their conversation.

**ACT:** The Ad Hoc Group has been meeting for over five years. Could you describe what the group is trying to accomplish and whether it has been successful in meeting its goals?

**Tóth:** The group was mandated by the 1994 special conference of states-parties to develop measures to promote compliance with the Biological Weapons Convention. The group's mandate clearly identified areas in which the group should invest its time and energy. As a result, what is emerging after the more than 50 weeks of negotiations since the special conference are measures intended to strengthen compliance with the Biological Weapons Convention and to enhance its implementation-measures such as declarations of biodefense and industry facilities, visits to those facilities, possible investigations, and cooperative arrangements, all of them underpinned by confidentiality, organizational, and other auxiliary provisions.
ACT: Do you feel the group has been successful in meeting its mandate?

Tóth: The group has gone through different stages since January 1995. Between January 1995 and July 1997, it identified the main building blocks for the future draft protocol to the BWC. In July 1997, the first version of the so-called draft rolling text emerged. Between July 1997 and October-November 1998, the group fleshed out that text. To give you an idea, the volume of the draft rolling text multiplied four to five times in that time, and there was a very significant increase in the number of brackets, which indicate controversial issues. So, a peak was reached in October-November 1998 with 3,200 brackets in the rolling text, which meant about 10 brackets per page.

Between January 1999 and January 2000, another phase occurred in which more than 50 percent of the brackets were removed. By the end of the first session in 2000, there were less than five brackets per page, on average, in the rolling text. In the March 2000 session, which is the second session of this year, we saw a slowdown in the clean-up process, which is, in my judgment, a natural part of the negotiating process. This indicates that we will have to add new efforts and new techniques to remove the remainder of the brackets with more formal work, more investment in exploring possible compromises, and probably a more comprehensive set of proposals as well.

ACT: The rolling text is, as you've indicated, pretty far along now. What areas have been largely agreed upon?

Tóth: Roughly speaking, I would say that we have three categories of maturity in the rolling text. First, you will find areas in the rolling text where the number of brackets is insignificant, areas such as confidentiality, national implementation, assistance, legal elements, and organization. On these issues, there is very little room to negotiate because further negotiations might do more harm than good. They might not lead to the removal of the few remaining brackets, but just bring in controversial text to areas that are otherwise clean.

We have other areas where the text is consolidated and difficulties are not so controversial. These areas are the preamble, to a certain degree; general provisions; and the lists of agents and equipment. I would venture to say that even the so-called promotional aspects of scientific and technical cooperation measures are in relatively good status. I should also include investigations in this second category, with the exception of very specific aspects.

The third category relates to declarations, declaration formats, visits, transfers, thresholds, and definitions. In this area, if you take visits, for example, the consolidation of the text is significant; there is a good maturity of the text. But at the same time, there are difficult issues to face: what role should visits play, what should their character be, what should the underlying procedures for visits be, what facilities should be covered by visits. Of course, the answers to these questions depend on how wide the declaration net for facilities will be. There is another question that is very closely related: how to reflect declaration triggers in the declaration formats. On these issues, options are well identified. What is needed is some judgment, a mix of technical judgment and judgment of a more general nature, about the pros and cons these measures might bring to different states-parties. For the regulatory aspects of cooperation, the transfer and export control-related elements, the text is not as consolidated as it is for some of the compliance measures, and there are very serious conceptual differences as well. There are even more conceptual differences on the issue of possible thresholds and certain categories of definitions, which are referred to by some delegations as “basic definitions.”

ACT: You've mentioned a number of areas that are considered controversial, such as the role of visits. What do you see as the way forward in this area?

Tóth: I think the first step would be to further consolidate work on declarations. This involves deciding how to define, in practical terms, what is relevant for the protocol and what is not; how to find the right trade-off between catching in the declaration net those facilities that should provide information about their activities, and, at the same time, making the job manageable and meaningful. That is, the declarations should not try to collect data of such volume that it cannot be processed, or the processing of which would not be commensurate with the size of the future BWC implementing organization. Such a mass of data might be more difficult to protect if it is not handled
in an appropriate way. That would be the first step.

The second step is to think over in different capitals the role to be assigned to potential measures between declarations and investigations, that is, visits. States need to decide whether the intention is to have a set of flexible tools to provide deterrence without resorting to more heavy and politically damaging acts like investigations. The answer to this question might define the deterrent value different parties give to the so-called randomly selected/transparency visits. It may also clarify the value added by flexible, low-key remedial tools such as the so-called clarification procedures, which include visits.

Of course, the potential pitfalls of visits are relevant as well. First of all, from the point of view of preserving national security information and commercial proprietary information, we need a very careful analysis of what might be included in the visits package that guarantees states-parties that their concerns over national security information and commercial proprietary information will be met. This could be done not by removing major provisions of visits, but by making adjustments that might have a positive impact.

We will need a careful analysis of how much the future organization can afford, administratively and financially, in terms of visits. We will have to adjust either the number of visits or states-parties' expectations, or both, so that a meaningful visits regime can be realized while, at the same time, maintaining a manageable burden on the future organization, one that is within the financial limits being envisaged by the states-parties.

ACT: Another controversial issue has been the role of export controls in the protocol, particularly how the protocol will deal with existing national export controls and export control bodies, such as the Australia Group. How can progress be made in this area?

Tóth: The issue, as you rightly pointed out, remains controversial. My feeling is that there is an understanding that the issue will have to be addressed in the context of the basic pillars of the Biological Weapons Convention, like Article I, which defines what is legitimate under the convention; Article III, which deals with the transfer issue; Article IV, which describes the national obligations of states-parties in areas laid out in Article I; and Article X, which calls for cooperation and exchanges.

The challenge for negotiators is to find a solution within these parameters that does not contradict any of these articles, a solution that is based on the basic pillars of the convention. In line with some well-articulated and often-differing expectations regarding the future protocol, the protocol should not take away anything that is viewed as a functioning element of the regime. At the same time, it should provide elements that add value to the wider regime, and by the regime I mean not just the protocol itself but the wider Biological Weapons Convention regime.

ACT: I understand that there is also difficulty with definitions—what terms in the protocol might need defining. Can you offer a suggestion on how progress can be made on this issue?

Tóth: Not at this stage. I hope I might be able to at a later stage in the light of further consultations on the value different categories of definitions might add to the protocol.

ACT: Can you explain how the protocol's implementing body is likely to be structured?

Tóth: As we discussed, this issue will have to be approached from different angles. One angle is the functional angle, which will depend on the size of the declaration net and how many facilities will be caught in this declaration net, the number of declarations to be filed, the number of visits to be carried out annually, and the number of additional activities that will have to be carried out in the field of cooperation. There will have to be judgment about the possible future size of the organization required to fulfill these jobs.

At the same time, states-parties have certain ideas about how much they will be ready to spend on the new organization. The estimates that were aired in informal discussions were around $30 million. Based on these functional expectations and resource-allocation expectations, one could have a rough idea about what the size of the organization might be. For example, with an organization of
about 250 people and a budget of around $30 million, as suggested by some studies, it might be possible to carry out about 100 visits and inspections annually with the necessary administrative support that is needed for the inspectorate to undertake these visits. Those are the numbers that are presented in very comprehensive studies published by Bradford University and the Federation of American Scientists. As I understand, a new study by the Federation of American Scientists will also address this issue. They might provide more details.

As for the structure of the organization, the organization will have to cover the main provisions of the future protocol. The proportions of manpower and financial allocations will require close attention as early as the preparatory committee phase before the protocol's entry into force, when institution-building will start.

**ACT:** The Chemical Weapons Convention [CWC] has been in force for almost three years now. Are there lessons that can be learned from this convention's implementation that can be applied to the protocol and the negotiations on the protocol?

**Tóth:** I think so. What is encouraging is that feedback on the lessons to be drawn from the Chemical Weapons Convention is being considered when elements are being incorporated into a future package. Of course one will see differences between the Chemical Weapons Convention and the activities foreseen under the BWC protocol. In certain cases, it is difficult to say whether those differences are derived from what we have learned from the CWC's implementation or whether they are related to the differences between biological agents and chemical agents.

In the area of declarations, an important lesson is to be careful with projections concerning the number of facilities to be declared. In the case of the Chemical Weapons Convention, there is nearly an order of magnitude of difference between some of the estimates that were made earlier on facilities expected to be declared and the results that turned out.

Another area is the lead time needed for implementation stages. In the case of the Chemical Weapons Convention, some of the deadlines for initial declarations, for example, created a situation where the secretariat had some difficulty dealing with tasks because submissions were peaking at the same time and implementation efforts had to be carried out in a relatively concentrated manner. The situation would have been even worse if all the states that possessed chemical weapons joined the Chemical Weapons Convention at the time of the entry into force. Provisions are being drafted in our negotiations to ensure the timely submission of declarations, another requirement identified as a result of the CWC's implementation.

Additionally, drawing on some of the lessons from the Chemical Weapons Convention's implementation in the area of confidentiality, we will probably see an enhanced set of confidentiality measures in the protocol that provide additional safety nets, trying to prevent leaks of information and to provide remedies if such situations arise. So, codification of the Chemical Weapons Convention and the convention's implementation have provided some important benefits to the Ad Hoc Group delegates sitting in Geneva.

**ACT:** Moving back to the issue of compliance measures, what types of parameters are under consideration for investigations? How much freedom will the inspectors have once they arrive on-site? What type of equipment will they be allowed to bring with them?

**Tóth:** Some of the major aspects of this issue are still open. For example, in terms of inspectors' freedom, it's still a question of how large the investigation area will be. Provisions on the treatment of the inspectors, to a certain degree, are quite close to provisions in the Chemical Weapons Convention. There are important limitations on sampling in the protocol stating that there will be no removal of samples from the sites and that sampling will be a last resort. Also, the whole question of decision-making on launching an investigation is very much open: whether it will be a so-called green-light procedure where the future executive council will have to vote to permit an investigation, or whether it will be a red-light procedure where the investigation is launched automatically and halting it will result only from an explicit decision of the executive council.

How a field investigation can grow into a facility investigation is also an issue to be explored further.
However, the issue of investigations examining the outbreak of disease is, in my judgment, in a relatively consolidated state, which is an encouraging sign.

**ACT:** Opponents of the protocol in the United States have been concerned about invasive on-site verification measures that they feel could lead to the loss of commercial proprietary information, a topic that you touched on before. In particular, there is concern over the prospect of foreign nationals entering sensitive U.S. facilities. What measures are included in the protocol that might allay these concerns?

**Tóth:** Since the very beginning of the negotiations, negotiators have been quite sensitive to the concerns of not just delegations, but of industry, as well. One could pinpoint elements in the protocol that are intended to address those concerns.

In the area of declarations, first of all, the intention is to find the right trade-off between the necessary level of transparency and requests for information that is not relevant to transparency or that might be commercially sensitive. You will find a good reflection of that intention in the declaration formats, which do not require the submission of sensitive commercial proprietary information.

In the case of visits, the negotiators are trying to find the right trade-off between providing the necessary insight into some facilities’ activities without compromising the facilities’ commercial interests. We intend to accomplish this by very clearly defining the purpose and the scope of the visits and by not making visits more intrusive than is really needed.

In addition, the Ad Hoc Group has already elaborated confidentiality rules on how information in the future organization should be handled and how personnel should behave. These are preventive auxiliary measures, which are in addition to measures related to declarations and visits.

Another set of provisions are so-called remedial measures, steps that will have to be taken in case there is a leak of confidential information. These elements have a certain deterrent character as well. Measures like lifting the immunity of not just the personnel, but, as distinct from the Chemical Weapons Convention, the director-general of the future organization. There is even discussion about lifting the immunity of the organization as well, in the event that states-parties unanimously agree that such a decision should be made. So, there are at least four or five mechanisms to address the commercial and national security information concerns of states-parties.

**ACT:** How will the protocol deal with states that refuse to cooperate with either routine activities or special circumstances, such as investigations?

**Tóth:** I think we have to divide this issue into two parts. If by routine activities we mean compliance measures, like declarations or visits, these are measures prescribed by the protocol and, of course, the expectation is for states-parties to fulfill those obligations.

Again, based on the lessons of the Chemical Weapons Convention, there are certain provisions built into the protocol to take care of potential problems, like countries not submitting declarations or not submitting declarations in a timely manner. There are complete provisions for the implications of these scenarios, addressing what kind of rights might be suspended for those states-parties that are not fulfilling these obligations.

As for visits, there is a set of provisions on how consultations and clarifications might be handled, starting with the lowest level of interaction, that is political consultation; ending with the highest level of treatment, like holding a special session of the Conference of States Parties; and including well-staged steps to pursue between these two extremes.

In cases that investigations are refused or provisions of the convention are not implemented and the mechanism to take care of such problems is rejected, the issue might leave the framework of the protocol or the convention and might be taken up by the UN Security Council.

**ACT:** The United States seems to have followed a strategy of seeking to reduce the impact of the
protocol on its biotech industry and its biodefense infrastructure. At the same time, some non-aligned states have opposed mandatory clarification visits, believing that they would be subject to more of these visits than Western countries. Some analysts feel that these negotiating strategies come at the expense of developing more robust compliance measures. What are your thoughts on this matter?

Tóth: The degree of intrusiveness of future compliance measures, especially visits, will be defined, to a certain degree, by functional requirements. But as your question implies, different constituencies are, of course, trying to shape the functional requirement to reflect their own interests.

My feeling is that the emerging visits regime in the protocol is probably second-to-none and is quite comparable to other arrangements, hopefully both quantitatively and qualitatively. Let us compare the number of visits possible under the BWC protocol with those under the Chemical Weapons Convention. We have to be careful here because the protocol is not yet complete, but we have projections. The protocol will focus on relevant facilities, so declarations will probably be nearly an order of magnitude lower than was the case with the CWC. At the same time, the number of visits to be carried out by the future organization will be within the CWC’s order of magnitude, at least until the OPCW [Organization for the Prohibition of Chemical Weapons] focuses on the destruction of chemical weapons stockpiles. This facility-to-visits ratio will be achieved with an organization that is intentionally planned to be half of the OPCW’s size.

Here, I would like to call attention to the category of clarification visits, which has no comparable equivalent in the Chemical Weapons Convention. These visits are a really flexible tool used to address certain concerns at the lowest possible level of controversy, without resorting to more controversial investigations. This new framework can be traced to some recent arrangements, like the IAEA’s Additional Protocol, again, a lesson drawn from another field.

So, if I take these elements into account, I remain optimistic that the visits package, both quantitatively and qualitatively, will be second-to-none. And as I mentioned before, we are trying to take into account both commercial propriety information-related and national security-related concerns because of another lesson drawn from the Chemical Weapons Convention: the life-cycle of a legal arrangement does not end at the negotiations. It has to be signed, ratified, and implemented by states-parties. For all these stages, it is extremely important to find the right trade-off between the interests of the regime and national interests. The challenge is to balance these interests in a way that will not affect the effectiveness of the future arrangement.

ACT: Until somewhat recently, it is my understanding that the United States did not take an assertive stance during the negotiations. Did the lack of U.S. leadership hamper the negotiations before, and now that the United States is playing more of a role, how do you feel it has impacted the negotiations?

Tóth: President Clinton made a statement in January 1998 about U.S. expectations vis-à-vis the conclusion of this protocol. The extent to which delegations have a prominent role and the success or lack of success in promoting national objectives cannot be measured in terms of articulated positions or how frequently a certain delegation takes the floor.

I think at the end of the day, the expectations of each and every delegation, and the outcome of the negotiations, will have to be compared. My hope is that no delegation will be in a position at the end of the day to say that its expectations have been totally fulfilled. If that is the case, it would mean we had arrived at a balanced package of solutions, which would make no delegation happy, but which each and every one of them would accept.

ACT: My understanding is that the next step in the negotiating process is to move from the rolling text to a chairman’s text. What is the purpose of the chairman’s text and what criteria need to be met before you can set to work on it? When do you anticipate the release of this text?

Tóth: The process, up until now, has been an incremental one, and my feeling is that it will remain
such. My hope is that there will be a natural transition from one stage to another, where, compared to the present stage, we will have even more private discussions and informal, transparent consultations. In the event that these different channels of communication are not just intimate and in-depth, but are efficient as well, it might be possible to identify solutions that could bring together a comprehensive set of proposals. It is too early to speculate exactly when the time will be right for that because it is very much dependent upon the outcome of the different sets of consultations.

**ACT:** How would the chairman's text serve to further the negotiations? What purpose will it fulfill?

**Tóth:** I think we have to think not in terms of whether there should be a chairman's text, but in terms of what the functional requirements of the negotiations are. It is important to conclude the negotiations with a protocol of good quality and without prolonged political or technical disputes. Based on these functional elements, the participants of the negotiations will have to judge if the situation has progressed far enough for a comprehensive set of proposals or for a chairman's text, which should be based on very in-depth and intimate preparatory discussions.

**ACT:** Analysts seem to differ with regard to whether the Ad Hoc Group will be able to conclude its work before the fifth review conference, scheduled for 2001. At the same time, delegations disagree on the need to increase the pace of the negotiations. What are your thoughts on the negotiations' pace and meeting the so-called 2001 deadline?

**Tóth:** I know we have spent as much time in negotiations as was the case for the Comprehensive Test Ban Treaty [CTBT], around 50 weeks of negotiations, though we should keep in mind that in strict physical terms our protocol is more voluminous than the CTBT. On the one hand, as I mentioned, we have made real progress in cleaning up the rolling text. We are in a situation where, compared to the CTBT, we shouldn't be ashamed of the existing situation, in terms of "bracket pollution." At the same time, the time available for the endgame seems to be a bit shorter than it was for the CTBT. In the CTBT's case, there was practically a continuous endgame, with just the Conference on Disarmament breaks interrupting. We are still having three-to-four week sessions; this year, 12 to 14 weeks will be spent on negotiations.

My feeling is that the remaining issues will not necessarily be solved with much more time. At this stage of the negotiations, what we need is a political judgment. If the judgment is made, and if the outcome of this judgment is a positive one, then we will be able to complete the negotiations in the time frame prescribed for us, even if it involves a special conference before autumn 2001. If the political judgment is not as favorable as I would like to see, then we will have to come back to your original question, but I hope we will not need another interview because of this question.

**ACT:** What do you feel is the final push needed to enter the endgame or to conclude the protocol?

**Tóth:** The push might be generated by the positive dynamics of the negotiations up until now. What is surprising then is that the push might be provided by further lack of progress because it would indicate that we have to think over the endgame that awaits us. Hopefully, it is not contradictory that there is also a need to make a political judgment.

What might help this political judgment is the "implosion phenomenon." We have invented for these negotiations a new technique called "Part Two" text, a set of new proposals issued each session. These are small packages, small comprehensive sets of proposals or revisions from Friends of the Chair. As a result of this process, unlike in some other negotiations, we were able to significantly reduce the number of brackets. This process might take us close to the implosion of remaining brackets in important parts of the protocol, which might speed up the political decision-making process.

**ACT:** And if the push doesn't come and the deadline is missed, what are the consequences for the protocol's future, the future of the Biological Weapons Convention, and, more broadly, the global non-proliferation regime?

**Tóth:** I am quite frequently reminded that I am more optimistic than I should be. Still, I would like to remain within the domain of positive thinking and rephrase the question in a positive way: what kind
of advantages will conclusion of the protocol bring forward?

The development and adoption of a verification protocol would in itself demonstrate the determination of the international community to raise further legal, political, and moral barriers against biological weapons and non-compliance with the Biological Weapons Convention. Besides that, the verification protocol would add value to other areas of the wider biological weapons prohibition regime as well.

The recent difficulties for arms control and disarmament further emphasize the urgent need for the conclusion of the negotiations. As the only multilateral disarmament negotiation being held, the Ad Hoc Group's work is the only effort that can send a positive message. It would take any other negotiations three to five years from now to reach a similar level of endgame maturity and ability to make a positive difference. The BWC protocol is the sole current source of reinforcement to faith in cooperative multilateral management of security challenges.

**ACT:** You had referred to the possibility of alternative negotiating strategies to move the negotiations forward. From what I understand, the European Union has suggested adopting new negotiating techniques. How do you feel about that?

**Tóth:** I think as we narrow down remaining issues of controversy, it will be clearer and clearer that it might be difficult to find solutions for certain issues in a narrow context. It is a natural phenomenon in the negotiations that countries try to have a balanced give-and-take. Because of that, there is a need to think more comprehensively about this give-and-take and about building blocks for a comprehensive set of proposals. Thus, it will be more and more important to run some of the discussions not in isolation, but to combine the present Friends of the Chair discussion format with a more integrated and more holistic approach. In addition to the ongoing formal work, what might be needed is an increasing degree of private consultations both by the Friends of the Chair and by the chairman, as well as more open-ended informal consultations that hopefully will result in formulations that might be building blocks for the final comprehensive set or sets of proposals.

**ACT:** The protocol needs to be ratified by Biological Weapons Convention states-parties to be applicable to them. In the event that some states-parties do not ratify the protocol, this could result in a two-tier system. Do you feel that that could be a problem?

**Tóth:** There are some important aspects to this question. First of all, what will be the entry-into-force formula for the protocol? Another aspect is what will be the provisions in the protocol for solving the relationship between states party to the protocol and states not party to the protocol. Both of these elements might provide different answers to your question.

But independent of the outcome of discussions on these two issues, which are quite complicated, yes, one should not preclude the possibility that there might be different categories: states-parties to the protocol, states-parties to the convention, and states not party to the convention. We probably need incentives to have the widest appeal to states to join the first category, to provide a certain grace period in which countries can move to the first category.

What are some positive incentives to attract the attention of those countries that are not necessarily opposed to the protocol but do not have the political or the public attention vis-à-vis these issues? In that respect, it is extremely important to have a meaningful set of cooperative measures in the protocol because it will be a clear-cut benefit, especially for developing countries, in the area of strengthening public health; public health infrastructure; and disease surveillance, control, and management mechanisms. At the same time, in light of the transnational character of some diseases, be it naturally occurring or man-made, these cooperative arrangements should not necessarily be limited just to developing countries.

**ACT:** Could you explain what kind of progress the last negotiating session has made on the areas of contention?

**Tóth:** The progress in this session was slower than in the previous ones, which might be an indication that we have to incrementally adjust our negotiating techniques to the changing situation.
By now, we have very well isolated the remaining islands of controversy in a sea of clean text and will have to find solutions to them. At this point, these solutions will have to be more political than technical, based on weighing the pros and cons of the protocol. My sincere hope is that in this final judgment, to be made in different capitals, the positive elements will eventually outweigh the constraints the protocol will impose on all states. If the emerging outcome of the negotiations is making each and every participant equally unsatisfied, that might be a clear sign that a decent compromise is on the horizon.

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